



**COMMONWEALTH OF VIRGINIA**  
**DEPARTMENT OF INFORMATION TECHNOLOGY**  
**REQUEST FOR PROPOSALS**  
**FOR AN**  
**APPLICATION SERVICE PROVIDER**  
**For THE DEPARTMENT OF EDUCATION**  
**RFP 2003-21**

**Issued**  
**Due**

**March 31, 2003**  
**4:00 p.m. : local time**  
**April 29, 2003**

  
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**Acquisition Services**

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## **SECTION 1: Executive Summary**

### **1.1 Summary:**

The purpose of this Request for Proposals (RFP) is to solicit sealed proposals from qualified firms in order to establish one statewide contract for an Application Service Provider (ASP) for educational institutions, *as defined in Section 2.2-9301 of the Virginia Public Procurement Act (VPPA), hereinafter referred to as "Authorized Users"*. The resulting contract will provide a means for K-12 educational software and educational webs sites to be made available through subscriptions at discount pricing. The term of this contract will be for one year, with 3 one-year renewals to be exercised at the discretion of the Commonwealth.

### **1.2 Contents of this Request for Proposals:**

This document contains the instructions governing the proposal to be submitted; the format in which proposals are to be submitted, and the material to be submitted therein; project requirements; evaluation criteria; and contractual terms and conditions.

### **1.3 Contact Information:**

It is the Offeror's responsibility to inquire about and clarify any requirement of this RFP that is not clearly understood by the Offeror. All verbal questions are discouraged. The Commonwealth will not be bound by verbal responses to questions. **All inquiries concerning this RFP should be submitted in writing to (Mark envelopes "Questions on RFP 2003-21):**

Mr. Doug Crenshaw  
Department of Information Technology  
110 South 7th Street – East Lobby Level  
Richmond, Virginia 23219  
Fax: (804) 371-5969

All written inquiries must be received by the Issuing Office on or by close of business April 22, 2003. Facsimiles are acceptable at (804) 371-5969 or e-mail to [dcrenshaw@dit.state.va.us](mailto:dcrenshaw@dit.state.va.us). No further written inquiries will be accepted after that date.

### **1.4 Closing Date and Time:**

The original and four (4) copies of the technical proposal must be submitted under separate cover and must contain the full name and address of every company bearing an interest in the proposal. The original technical proposal and cost proposal (**only one copy of the cost proposal is required**) must be signed by the Offeror's contractually binding authority. The cost proposal must be submitted in a separate clearly marked and sealed package. All proposals must be received not later than 4:00 p.m. local time, April 29, 2003.

### **1.5 Acquisition Services Division Web Site:**

The Acquisition Services Division (ASD) of the Department of Information Technology maintains a web site with a URL of <http://asd.state.va.us>. This web site provides information about ASD and acquisitions conducted by ASD for Information Technology related items. Offerors are invited to check this site regularly. The original document, plus all changes or amendments will be found on this web site.

### **1.6 Rules Regarding Late Proposals and Modifications:**

No proposal or unsolicited modifications to a proposal will be accepted after the closing date and time. Offerors may use any means of delivery but it is the responsibility of the Offeror to allow adequate time for delivery to the appropriate office. Proposals and modifications received after closing will be returned unopened.

### **1.7 News Releases:**

No public disclosure or news release pertaining to this procurement shall be made without prior written approval of the Issuing Office. **FAILURE TO COMPLY WITH THIS PROVISION MAY RESULT IN THE OFFEROR BEING DISQUALIFIED.**

### **1.8 Registered Vendors:**

PROPOSALS WILL NOT RESULT IN AWARD IF THE OFFEROR IS NOT REGISTERED WITH THE DEPARTMENT OF INFORMATION TECHNOLOGY. A completed registration form must be on file or received by DIT (Acquisition Services Division) not later than award date. Call (804) 371-5900 to request a registration form. Offerors may also download a Vendor Application form from ASD's web site with a URL of <http://asd.state.va.us> if you need assistance, call (804) 371-5900.

### **1.9 Rejection of Proposals:**

The Commonwealth of Virginia reserves the right to reject any and all proposals, in whole or in part, received in response to this request. DIT shall not cancel a Request for Proposals or reject any proposal solely to avoid awarding a contract to a particular responsive and responsible Offeror. In addition, DIT reserves the right to waive informalities and to delete items prior to award.

The term Offeror as referenced in this solicitation refers to the firm preparing and submitting a proposal in response to this Request for Proposals (RFP). The term Contractor refers to the firm who when awarded the contract will be responsible for services as required as a result of this solicitation.

## **1.10 Procurement Policies and Procedures:**

Information Technology and Telecommunications procurement activity conducted by the Commonwealth of Virginia is governed by provisions of the Virginia Public Procurement Act and guided by provisions of the Vendor's Manual, December 1998, Commonwealth of Virginia (As Amended). The provisions of this RFP are intended to conform to applicable policies and procedures contained in the aforementioned MANUAL. In the event that an Offeror should perceive a provision of this RFP to be at variance with a provision of the MANUAL, VENDORS ARE DIRECTED TO REGARD THE RFP PROVISION AS PREVAILING.

## **1.11 Cost of Proposals:**

The Offeror is responsible for all costs of proposal preparation. The Commonwealth is not liable for any costs incurred by a vendor in response to this RFP.

## **1.12 Identification of Proposals:**

All proposals submitted for consideration shall be clearly marked on the outside cover of all envelopes, boxes or packages:

From:           Name of Vendor  
                  Street or P.O. Box Number  
                  City, State, Zip Code  
                  Due Date: April 29, 2003   Time: NLT 4:00 p.m. (Local time)  
                  RFP Number 2003-21

Note: The technical and cost proposals must be submitted in separate, sealed packages with the appropriate label, i.e., "Technical Proposal" or "Cost Proposal".

## **1.13 Definition of "Mandatory" Requirements and "Desirable" Features:**

### **1.13.1 Mandatory Requirements:**

The use of "shall", "must", or "will" in this RFP or its official amendments indicates a requirement or condition that is mandatory (mandatory requirement), and shall not be construed in any way as allowing deviation from any requirement. Deviation from mandatory requirements will not be accepted by the Commonwealth. The Commonwealth of Virginia reserves the right to reject any and all proposals and to waive minor informalities. All mandatory requirements must be met in order for any proposal to be considered. The Offeror must respond to the mandates identifying if he or she can fulfill the requirements identified herein and how the Offeror proposes to meet the requirements. Substantiation to responses must be provided. The Commonwealth has established guidelines for Offerors governing the interpretation of RFP requirements.

FAILURE TO AGREE TO THE MANDATORY TERMS AND CONDITIONS SHALL RENDER THE OFFEROR'S PROPOSAL NON-RESPONSIVE AND THE OFFEROR SHALL NOT BE CONSIDERED FURTHER. THE OFFEROR SHALL INCLUDE IN THE PROPOSAL A STATEMENT CONFIRMING ACCEPTANCE OF THE MANDATORY TERMS AND CONDITIONS VERBATIM, LISTED IN SECTION 7 OF THIS RFP.

#### **1.13.2 Desirable Features:**

There are a number of features that are considered desirable by the Commonwealth. Those services which will enhance the overall system and performance are not considered mandatory will be considered "desirable". Words such as "desirable", "should", "is requested", "is urged to", are important to the user in selecting an Offeror, but in order to permit Offerors to meet the requirements creatively, they are not specified as strictly mandatory requirements. Offeror responses to desirable services should meet stated goals, objectives, or enhance performance and identify how the proposed system meets the stated requirement. However, failure of a proposal to meet desirable requirements is not disqualifying. Offerors should document the extent to which they can meet the desirable or optional services. Proposals that provide more of the desirable features or that meet them more effectively than another proposal will be given stronger consideration in Offeror selection.

#### **1.14 Oral Presentation:**

An oral presentation by the Offeror may be required. If an oral presentation is required to clarify or substantiate any area contained in the Offeror's response, the Issuing Office will schedule a time and place for the presentation. This provides an opportunity for the Offeror to clarify or elaborate on the proposal. This is a fact finding and explanation session only and normally does not include negotiation. The response must be complete in all respects, as oral presentations and demonstrations MAY or MAY NOT be scheduled. All costs incurred by an Offeror to provide oral presentations are the responsibility of the Offeror.

#### **1.15 Proprietary Information:**

SECTION 11-52d, Virginia Public Procurement Act, states "Trade secrets or proprietary information submitted by a bidder, Offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, Offeror, or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. The proprietary or trade secret material submitted must be identified by some distinct method such as highlighting or underlining and must indicate only the specific words, figures, or paragraphs that constitute trade secret or proprietary information. **The classification of an entire bid or proposal document, line item prices and/or total bid or proposal prices as proprietary or trade secrets is not acceptable and may result in rejection of the bid or proposal.**

The vendor must provide "Appendix C" which provides a list of all pages in the proposal that contains proprietary information along with the reason. Only pages contained in that list will be treated as proprietary. The Offeror may as an option, provide a fully redacted copy of their proposal to be utilized in those circumstances where public proposal review is needed.

**FAILURE TO MARK THE DATA OR OTHER MATERIALS AS STATED WILL RESULT IN THE DATA OR OTHER MATERIALS BEING RELEASED TO VENDORS OR THE PUBLIC AS PROVIDED IN THE VIRGINIA FREEDOM OF INFORMATION ACT.**

**1.16 Proposal Format:**

The proposals should be organized in the exact order in which the requirements are presented in the RFP and should be page numbered. The proposal should contain a table of contents which cross references the RFP requirement and the specific page of the response in your proposal. Each paragraph in the proposal must correspond to and reference the paragraph number in the corresponding section of the RFP. The Offeror must repeat the paragraph number, sub-letter, and text of the requirement as it is presented in the RFP. If a response covers more than one page, the Offeror must repeat the paragraph number and sub-letter at the top of the subsequent page.

Proposals that are not organized in this manner may be eliminated from consideration for failing to specifically address the technical and contractual requirements. Offerors must document that they can meet mandatory requirement of the RFP and should document the extent to which they can meet the desirable or optional features.

Offerors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal preparation and subsequent evaluation process:

- a. The response should be complete and comprehensive, with a corresponding emphasis on being concise and clear.
- b. All proposed items should be identified as to whether they are in response to mandatory or desirable requirements. Each response to a mandatory item in the proposal must contain, as a minimum, a statement such as "XYZ Fully Complies".
- c. Regardless of whether or not a desirable is being proposed, all desirables should be identified as to their availability and associated costs **(to appear in the "Cost Proposal" ONLY)**.
- d. Elaborate bindings or literature are not necessary, but all documents should be clear and legible. Poor quality copies of materials may be rejected.

**1.17 Multiple Proposals:**

An Offeror may submit one or more proposals. All proposals must be complete and must comply with all of the instructions of this RFP.

### **1.18 Submission of Cost Information:**

All cost information must be signed, sealed and provided in a separate envelope. Cost information shall not be included in the technical proposal. The cost forms in Section 6 must be completed and returned in a separate envelope.

The Offeror's cost proposal must include all costs associated with the delivery of the proposed system, as well as any ongoing maintenance, operation, vendor support, user fees or charges or reimbursements and the "IFA". This includes all license fees, royalties, "third party" fees, and computer resources, as well as all labor costs, overhead and expenses.

The Offeror must be willing and able to successfully deliver all products and services proposed and to complete the project on a firm fixed-price basis. If the Offeror desires to propose additional products and/or services which it believes would benefit the COV (but are not required to successfully complete the project as proposed), such items should be included and clearly identified as optional.

### **1.19 Nondisclosure:**

All proposal information will be treated as confidential and will not be disclosed except as required for the purpose of evaluation. In accordance with the Virginia Public Procurement Act (VPPA) Section 11-52C1, proposals will be available for public inspection after negotiations and selection.

### **1.20 Sub-Contractor Identification:**

The primary (prime) vendor must identify a contact person, by name, organization and telephone number, who will be responsible for coordinating the efforts and personnel of all parties and/or subcontractors involved in the response. This includes, but is not limited to, responses to requests for interviews, oral presentations and clarifications of responses to the RFP.

### **1.21 Evaluation Criteria:**

All Mandatory requirements and Mandatory Terms and Conditions must be met. All proposals received will be reviewed and evaluated by the Selection Committee using the following criteria, the order of which is not indicative of their weight or importance:

- a. Responses to information requested in Mandatory Requirements
- b. Desirable features included in response
- c. Suitability of proposed solution. This includes but is not limited to:
  - Scope of offerings (selection of publishers and titles)
  - Options for delivery of programs
  - Access to programs when away from classrooms
  - Scope of management, assessment and tracking tools available
  - Custom web site offering
  - Security provisions



- Provisions for support
- d. Cost Proposal (Section 6)
- e. Participation of Small, Women-Owned and Minority-Owned Businesses

## 1.22 Selection Process:

Subject to approval by the Review Committee, proposals are evaluated on the basis of the criteria enumerated in the RFP and are scored in accordance with a weighting scheme established and approved prior to the opening of any proposals.

The Commonwealth is not required to furnish a statement of the reasons why a particular proposal was not the most advantageous. Should the Issuing Office determine in writing, and in its sole discretion, that only one Offeror is clearly more highly qualified than others under consideration, a contract may be negotiated and awarded to that vendor.

The proposal evaluation process involves, first, the review by a Selection Committee of all proposals received in response to the RFP to ensure that each proposal meets the mandatory requirements and the mandatory terms and conditions identified in Section 7 of this RFP.

**Proposals which have been determined by the Selection Committee not to have met one or more mandatory requirements or mandatory terms and conditions, and cannot be brought into compliance, are excluded from any further consideration.**

The second step in the evaluation of proposals involves each Selection Committee member evaluating the Offeror's technical proposal and assigning a score to each of the selection criteria based on his/her personal understanding or interpretation of each of the proposed items. It will be decided at the beginning of the process how scores are to be assigned to each of the criteria (such as from zero to four in half point increments, with two (2) as average). The full Selection Committee will then meet to discuss the scoring. Members may change their scoring, if they desire. Preliminary scoring may also be changed by committee members after oral presentations or demonstrations by the Offeror. Technical scores are totaled and multiplied by the weights assigned to arrive at a cumulative score and numerical ranking. At this point, Offerors may be offered the opportunity to submit revised cost proposals.

In the final step, the Offeror's cost proposal will be opened by the Selection Committee and the Evaluated Cost will be determined. The Evaluated Cost will be applied to formula below. The technical and cost proposals will be summed to provide a ranked list of Offerors. Unless there is deemed to be one Offeror that is clearly more qualified, two or more Offerors deemed to be fully qualified and having the highest evaluation scores are then selected for negotiations. Offeror may be requested to provide revised pricing for their proposals as amended during negotiation. If revised costs are requested, cost will be recomputed; scores for the other evaluation criteria **MAY NOT BE ALTERED**. The lowest price received is the basis for the application of the cost scoring formula.

The cost scoring formula for evaluating proposals is:

$$\text{Cost factor} = (LV/V)$$

Where: LV = lowest cost vendor (\$)  
V = vendor being evaluated (\$)  
Cost score = cost factor x points available for cost

### **1.23 Review Phase:**

A Review Committee, consisting of Commonwealth employees who do not have a direct involvement in the selection, will review the selection process and major decisions such as Offeror disqualification, to ensure that the selection was fair and unbiased.

### **1.24 Post Award Review:**

Following selection of the winning Offeror(s) and formal notification, the Director, Acquisition Services Division, or his designated representative, will review the selection with other vendors on an appointment basis only. Offerors desiring to review the selection process must do so within 30 days after Notification of Intent to Award, or other notification as deemed applicable by DIT, is posted.

### **1.25 Participation by Small Businesses, and Businesses Owned by Women and Minorities.**

It is the policy of the Commonwealth of Virginia to contribute to the establishment, preservation and strengthening of small businesses and businesses owned by women and minorities and to encourage their participation in State procurement activities. The Commonwealth encourages contractors to provide for the participation of small businesses and businesses owned by women and minorities through partnerships, joint ventures, subcontracts, and other contractual opportunities. Submission of a report of past efforts to utilize the goods and services of such businesses and plans for involvement on this contract is required. By submitting a proposal, Offerors certify that all information provided in response to this RFP is true and accurate. Failure to provide information required by this RFP will ultimately result in a lower evaluation ranking.

All information requested by this RFP on the ownership, utilization and planned involvement of small businesses, women-owned businesses and minority-owned businesses must be submitted. If an Offeror fails to submit all information requested, the purchasing agency may require prompt submission of missing information after receipt of Offeror proposals.

Instructions for providing the required information, including definitions, are included as Appendix "A" to this RFP. Forms to assist the Offeror in providing the required information are also included as Appendix "A". You are not required to use the forms so long as the minimum information required is provided in the prescribed format.

### **1.26 Faith Based Ministries**

The Commonwealth of Virginia does not discriminate against faith-based ministries.

### 1.27 Contractual Binding:

- a. This RFP, the response submitted by the successful Contractor, and all amendments and written clarifications, or any portions thereof, may be incorporated into the agreement signed by the successful contractor and the Commonwealth of Virginia. If a proposal contains items or services which are not manufactured, generally supplied, or maintained by the proposing Offeror, the vendor will accept full responsibility for the service as if it were the Offeror's own. The Commonwealth will contract only with the prime Contractor who will be responsible for the performance of and payment to any subcontractor(s).
- b. Price quotations and other time dependent information contained in proposals shall be valid for a minimum of 120 days following the closing date.
- c. SECTION 7 of this solicitation, entitled "Mandatory Terms and Conditions" contains the mandatory terms and conditions. These terms will be included verbatim in any agreement executed by the Department of Information Technology. **FAILURE TO AGREE TO THE MANDATORY TERMS AND CONDITIONS SHALL RENDER THE OFFEROR'S PROPOSAL NON-RESPONSIVE AND THE OFFEROR SHALL NOT BE CONSIDERED FURTHER. THE VENDOR SHALL INCLUDE IN THE PROPOSAL A STATEMENT CONFIRMING ACCEPTANCE OF THE MANDATORY TERMS AND CONDITIONS, VERBATIM LISTED IN SECTION 7 OF THIS RFP.**

### 1.28 eVA Business to Government Portal

By date of award, all Offerors are required to be registered with the Commonwealth of Virginia's e-procurement website (eVa) located at <http://www.eva.state.va.us>. Offerors are advised to print the eVa page which lists their firm's name and submit it with their bid response, for proof of registration.

If your firm is not registered with eVa, please visit the following website: <https://web-9.buysense.com/vssu/glue/default.asp>. Offerors are advised to print a copy of the completed registration confirmation and submit it with their proposal response.

**FAILURE TO PROVIDE EVIDENCE OF eVa REGISTRATION MAY RENDER OFFER NON-RESPONSIVE.**

### 1.29 IFA

Vendors are advised to read and understand the paragraphs entitled "Contractor's Report of Sales" and Industrial Funding Adjustment" listed in the attached Terms and Conditions. **FAILURE TO ACCEPT THESE TERMS AND CONDITIONS WILL RENDER THE OFFEROR'S PROPOSAL NON-RESPONSIVE AND IT WILL NOT BE FURTHER CONSIDERED.** Failure to comply after

award will result in a "Breach of Contract" situation that will result in Contract cancellation and other remedies as necessary.

**1.30 GOVERNING DOCUMENTS:**

- a. Final solicitation document as it appears on the ASD website at <http://asd.state.va.us>.
- b. All amendments, attachments and answers to questions as posted on the ASD website.

## **SECTION 2: GENERAL OFFEROR INFORMATION**

### **2.1 General Information:**

This section requires information about the Offeror's background and experience.

### **2.2 Offeror's Operating Organization:**

Provide an overview of the operating structure and geographical locations of the firm at the national, regional, and local levels.

### **2.3 Company Contact:**

Provide the name, title, street address, city, state, zip code, e-mail address, telephone and fax numbers of the primary contact person.

### **2.4 Support Contact:**

Provide the telephone and email addresses of personnel for customers to contact for support.

### **2.5 Corporate Identity:**

- a. Provide the identity of any parent corporation.
- b. Provide the identity of any subsidiaries if appropriate.

### **2.6 Listing of Authorizations**

Offeror must be an authorized dealer, reseller or the original provider of the software and services proposed. The Commonwealth reserves the right to confirm the status of the Contractor as an officially authorized dealer or reseller.

### **2.7 References:**

The Offeror shall provide at least three (3) current references who can confirm the Offeror's qualifications. See the Vendor Client Reference Form in APPENDIX B. The Commonwealth will make such reasonable investigations as deemed proper and necessary to determine the ability of the Offerors to perform the contract and these may include, but may not be limited to, reference checks and interviews.

### **SECTION 3: GENERAL BACKGROUND/DESCRIPTION OF CURRENT ENVIRONMENT**

The Commonwealth of Virginia is soliciting sealed proposals in order to establish a statewide contract with one Offeror to be an Application Service Provider (ASP) for K-12 educational software and educational websites. The term of this contract will be for one year, with options for three one-year renewals, to be exercised at the discretion of the Commonwealth. Services will be provided via the Internet and CD-ROM, on a subscription basis, at a price discounted from the usual discounts offered to K-12 school divisions.

The successful Offeror should be able to propose to participating school districts a large selection of titles (preferably at least 200) and websites to subscribe to. There is a provided list of publishers, and Offerors must propose at least 50% of the publishers on this list. See Section 6 of this document for instructions how to download this list. In addition to this list, Offerors are encouraged to submit a variety of publishers and titles. Each of the software publishers proposed that are not on the required list must be included in the (SREB) EvalTech or California state database of evaluated software. Offerors must be able to broker with major K-12 software and web site companies for software and web sites that may be requested by the participating school divisions in addition to software currently available through the Offeror.

Software may be available in two formats: It may be downloaded by the school to its server(s) and then be accessed by users from the local server. Alternatively, it may be available via a web link. This would provide access to users at the schools and at remote locations, such as libraries, at home, etc. It is preferred that the school districts would have a choice as to how the software would be delivered. If requested, CD-ROM versions of the software may be available for local installation.

Offerors must provide a custom web page for participating school divisions, for teacher and student use. These pages will be used to provide the respective school districts with access to their contracted programs.

Support offerings will be part of the evaluation process. Offerors should offer support for the software titles, both on-line and via telephone.

## **SECTION 4: MANDATORY REQUIREMENTS**

### **4.1 Offeror must:**

- 4.1.a** Have current agreements with major K-12 educational software and website companies to provide (broker) products listed in the SREB (EvaluTech) database of evaluated software and web sites. Offerors should submit proof of agreements. Contractor shall be the single point of contact for licensing from various software vendors, and shall be responsible for all licensing, upgrades and support.
- 4.1.b** Offer software from at least 50% of the publishers listed in the Cost Evaluation Spreadsheet (see Section 6).
- 4.1.c** Describe how offerings will be made available to the school districts. Software and web site K-12 educational offerings should be available via the Internet, whether for direct use over the Internet or for download to a server. Internet offerings should be available to users both at the schools and off-site. Software should be available in CD-ROM format, if so requested. Software furnished under this contract shall be the latest version available at the time the order is placed, and the offerings must be updated as new releases are made available. List web browsers supported.
- 4.1.d** Provide custom web pages for school districts. These pages will be used to list and access software that is under contract. There should be no links to external sites on this site, unless requested by the school district. Describe capabilities and include samples, or include URL's to other custom pages your firm has created.
- 4.1.e** Describe provisions for teacher management tools, tracking and assessment tools. Describe availability and functionality of these tools.
- 4.1.f** Describe provisions for the alignment of selected software and web sites to state SOL standards and to be updated as needed. Describe functionality.
- 4.1.g** Describe how software meets COPA and BOBBY recommendations.
- 4.1.h** Describe availability of filtering software.
- 4.1.i** Describe availability of parental controls
- 4.1.j** Describe security offerings. These should include, but not be limited to, a discussion of use of passwords, security of user information, firewall protection at vendor's host site, virus protection, etc. Offerors shall also describe provisions for the backup and recovery of user data.

## **4.2 Warranty/Support**

Contractor shall provide continuous access to services, and shall provide support for any contracted services. This support should be available on-line and via telephone. Describe support structure, times of availability, methods of access.

## **4.3 Delivery**

Delivery (access to programs) is required within 30 days of order by customer.



## **SECTION 5: DESIRABLE FEATURES**

- 5.1** Describe ability to host and deliver software a school district may already have under contract.
- 5.1** Describe ability to provide trial or demonstration software.
- 5.3** Describe willingness and ability to procure, at discount prices, services from other educational content publishers that the Contractor is not currently in partnership with.
- 5.4** Website should offer simple, clear navigation, “bookmarks” to favorite links, provide administrative functions (statistics, user data, etc.), links to other mutually agreed-to resources and a filtered Internet search engine, if requested by a school district. A plus would be the ability for the school or district to list school news on the website, or at least provide a link to the school site.
- 5.5** Describe ability to work with school districts to provide pre-bundled, age-grouped combinations of software/web sites.
- 5.6** 24/7 telephone support is preferred, including holidays (as required).

## SECTION 6: PRICING SCHEDULE (COST PROPOSAL)

There is an Excel Spreadsheet located at <http://asd.state.va.us/asp.xls> (sample below), that lists the mandatory publishers. Offerors must propose at least 50% of the publishers on this list. Download this file, fill it in, and return on CD-ROM or on floppy disk with your proposal. For each publisher, indicate the discount percentage you are offering, as well as a URL link to that publisher's itemized public price list. If no URL is available, please submit a copy of that publisher's price list with your proposal.

The cost evaluation will be based on a representative "market basket". The Department of Education (DOE) will supply a list of approximately 50 titles before the proposal due date. While Offerors are required to provide the titles of at least 50% of the publishers listed on the Excel spreadsheet, it is possible that not all Offerors will propose all of the publishers on DOE's list. Titles not carried by all will be deleted from the market basket analysis. It is assumed that there will be at least 20 common titles, and these will be used (up to 25) as a target representative market basket. The list of titles will be posted to the ASD website on the date the proposals are due (<http://asd.state.va.us>, under "Current Bids").

### ***SAMPLE ONLY***

<b>Publisher</b>	<b>Offered (Y/N)</b>	<b>URL</b>	<b>Disc. From Price List</b>
ABC-CLIO Inc.			
Academic Systems			
AccuNet			
Achievement Technologies			
AGC United Learning			
Agency for Instructional Tech			
AIMS Multimedia			
Alfred Higgins Productions			

**Section 7: MANDATORY CONTRACTUAL TERMS AND CONDITIONS**

The following terms and conditions are **MANDATORY** and shall be included verbatim in any Contract awarded.

**1. VENDORS MANUAL**

This solicitation is subject to the provisions of the Commonwealth of Virginia *Vendors Manual* and any changes or revisions thereto, which are hereby incorporated into this contract in their entirety. The procedure for filing contractual claims is in section 7.19 of the *Vendors Manual*. A copy of the manual is normally available for review at the purchasing office and is accessible on the Internet at <http://www.dgs.state.va.us/dps> under "Manuals."

**2. APPLICABLE LAWS AND COURTS**

This solicitation and any resulting Contract shall be governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the courts of the Commonwealth. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations.

**3. ANTI-DISCRIMINATION**

By submitting their bids, bidders certify to the Commonwealth that they will conform to the provisions of the Federal Civil Rights Act of 1964, as amended, as well as the Virginia Fair Employment Contracting Act of 1975, as amended, where applicable, the Virginians With Disabilities Act, the Americans With Disabilities Act and §2.2-4311 of the Virginia Public Procurement Act. If the award is made to a faith-based organization, the organization shall not discriminate against any recipient of goods, services, or disbursements made pursuant to the Contract on the basis of the recipient's religion, religious belief, refusal to participate in a religious practice, or on the basis of race, age, color, gender or national origin and shall be subject to the same rules as other organizations that Contract with public bodies to account for the use of the funds provided; however, if the faith-based organization segregates public funds into separate accounts, only the accounts and programs funded with public funds shall be subject to audit by the public body. (Code of Virginia, § 2.2-4343.1E).

In every Contract over \$10,000 the provisions in A. and B. below apply:

A. During the performance of this Contract, the Contractor agrees as follows:

- 1) The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except there is a bona fide occupational qualification reasonably necessary to the normal operation of the Contractor. The Contractor agrees to post in conspicuous places, available to employees

and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

- 2) The Contractor, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, will state that such Contractor is an equal opportunity employer.
- 3) Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting these requirements.

B. The Contractor will include the provisions of A. above in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### **4. ETHICS IN PUBLIC CONTRACTING**

By submitting their proposals, Offerors certify that their proposals are made without collusion or fraud and that they have not offered or received any kickbacks or inducements from any other Offeror, supplier, manufacturer or subcontractor in connection with their proposal, and that they have not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged.

#### **5. IMMIGRATION REFORM AND CONTROL ACT OF 1986**

By submitting their proposals, Offerors certify that they do not and will not during the performance of this Contract employ illegal alien workers or otherwise violate the provisions of the federal Immigration Reform and Control Act of 1986.

#### **6. DEBARMENT STATUS**

By submitting their proposals, Offerors certify that they are not currently debarred by the Commonwealth of Virginia from submitting bids or proposals on Contracts for the type of goods and/or services covered by this solicitation, nor are they an agent of any person or entity that is currently so debarred.

#### **7. ANTITRUST**

By entering into a Contract, the Contractor conveys, sells, assigns, and transfers to the Commonwealth of Virginia all rights, title and interest in and to all causes of action it may now have or hereafter acquire under the antitrust laws of the United States and the Commonwealth of Virginia, relating to the particular goods or services purchased or acquired by the Commonwealth of Virginia under said Contract.

## **8. MANDATORY USE OF STATE FORM AND TERMS AND CONDITIONS FOR IFBs AND RFPs**

Failure to submit a proposal on the official state form provided for that purpose may be a cause for rejection of the proposal. Modification of or additions to the General Terms and Conditions of the solicitation may be cause for rejection of the proposal; however, the Commonwealth reserves the right to decide, on a case by case basis, in its sole discretion, whether to reject such a proposal.

## **9. CLARIFICATION OF TERMS**

If any prospective Offeror has questions about the specifications or other solicitation documents, the prospective Offeror should contact the buyer whose name appears on the face of the solicitation no later than five working days before the due date. Any revisions to the solicitation will be made only by addendum issued by the buyer.

## **10. PAYMENT**

### **A. To Prime Contractor:**

- 1) Invoices for items ordered, delivered and accepted shall be submitted by the Contractor directly to the payment address shown on the purchase order/Contract. All invoices shall show the state Contract number and/or purchase order number; social security number (for individual Contractors) or the federal employer identification number (for proprietorships, partnerships, and corporations).
- 2) Any payment terms requiring payment in less than 30 days will be regarded as requiring payment 30 days after invoice or delivery, whichever occurs last. This shall not affect offers of discounts for payment in less than 30 days, however.
- 3) All goods or services provided under this Contract or purchase order, that are to be paid for with public funds, shall be billed by the Contractor at the Contract price, regardless of which public agency is being billed.
- 4) The following shall be deemed to be the date of payment: the date of postmark in all cases where payment is made by mail, or the date of offset when offset proceedings have been instituted as authorized under the Virginia Debt Collection Act.
- 5) **Unreasonable Charges.** Under certain emergency procurements and for most time and material purchases, final job costs cannot be accurately determined at the time orders are placed. In such cases, Contractors should be put on notice that final payment in full is contingent on a determination of reasonableness with respect to all invoiced charges. Charges that appear to be unreasonable will be researched and challenged, and that portion of the invoice held in abeyance until a settlement can be reached. Upon determining that invoiced charges are not reasonable, the Commonwealth shall promptly notify the Contractor, in writing, as to those charges which it considers unreasonable and the basis for the

determination. A Contractor may not institute legal action unless a settlement cannot be reached within thirty (30) days of notification. The provisions of this section do not relieve an agency of its prompt payment obligations with respect to those charges that are not in dispute (*Code of Virginia*, § 2.2-4363).

**B. To Subcontractors:**

- 1) A Contractor awarded a Contract under this solicitation is hereby obligated:
  - (a) To pay the subcontractor(s) within seven (7) days of the Contractor's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by the subcontractor(s) under the Contract; or
  - (b) To notify the agency and the subcontractor(s), in writing, of the Contractor's intention to withhold payment and the reason.
  - (c) The Contractor is obligated to pay the subcontractor(s) interest at the rate of one percent per month (unless otherwise provided under the terms of the Contract) on all amounts owed by the Contractor that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in (b) above. The date of mailing of any payment by U. S. Mail is deemed to be payment to the addressee. These provisions apply to each sub-tier Contractor performing under the primary Contract. A Contractor's obligation to pay an interest charge to a subcontractor may not be construed to be an obligation of the Commonwealth.

**11. QUALIFICATIONS OF OFFERORS**

The Commonwealth may make such reasonable investigations as deemed proper and necessary to determine the ability of the Offeror to perform the services/furnish the goods and the Offeror shall furnish to the Commonwealth all such information and data for this purpose as may be requested. The Commonwealth reserves the right to inspect Offeror's physical facilities prior to award to satisfy questions regarding the Offeror's capabilities. The Commonwealth further reserves the right to reject any proposal if the evidence submitted by, or investigations of, such Offeror fails to satisfy the Commonwealth that such Offeror is properly qualified to carry out the obligations of the Contract and to provide the services and/or furnish the goods contemplated therein.

**12. TESTING AND INSPECTION**

The Commonwealth reserves the right to conduct any test/inspection it may deem advisable to assure goods and services conform to the specifications.

**13. ASSIGNMENT OF CONTRACT**

A Contract shall not be assignable by the Contractor in whole or in part without the written consent of the Commonwealth.

#### **14. MODIFICATIONS TO THE CONTRACT**

This Contract may be modified in accordance with §2.2-4309 of the Code of Virginia. Such modifications may only be made by the representatives identified in the signature blocks of this Contract or their designees. No modifications to this Contract shall be effective unless it is in writing and signed by the duly authorized representative of both parties. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent to breach is in writing.

Any Contract issued on a firm fixed price basis may not be increased more than twenty five percent (25%) or \$50,000.00 whichever is greater, without the approval of the Governor of the Commonwealth of Virginia or his authorized designee.

#### **15. DEFAULT**

In case of failure to deliver goods or services in accordance with the Contract terms and conditions, the Commonwealth, after due oral or written notice, may procure them from other sources and hold the Contractor responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies which the Commonwealth may have.

#### **16. TAXES**

Sales to the Commonwealth of Virginia are normally exempt from State sales tax. State sales and use tax certificates of exemption, Form ST-12, will be issued upon request, and can be obtained online at <http://www.tax.state.va.us/>. Deliveries against this Contract shall usually be free of Federal excise and transportation taxes. The Commonwealth's excise tax exemption registration number is 54-73-0076K.

#### **17. USE OF BRAND NAMES**

Unless otherwise provided in this solicitation, the name of a certain brand, make or manufacturer does not restrict Offerors to the specific brand, make or manufacturer named, but conveys the general style, type, character, and quality of the article desired. Any article which the public body, in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted. The Offeror is responsible to clearly and specifically identify the product being offered and to provide sufficient descriptive literature, catalog cuts and technical detail to enable the Commonwealth to determine if the product offered meets the requirements of the solicitation. This is required even if offering the exact brand, make or manufacturer specified. Normally in competitive sealed bidding only the information furnished with the bid will be considered in the evaluation. Failure to furnish adequate data for evaluation purposes may result in declaring a bid nonresponsive. Unless the Offeror clearly indicates in its proposal that the product offered is an equal product, such proposal will be considered to offer the brand name product referenced in the solicitation.

## 18. INSURANCE

By signing and submitting a bid or proposal under this solicitation, the bidder or Offeror certifies that if awarded the Contract, it will have the following insurance coverages at the time the Contract is awarded. For construction Contracts, if any subcontractors are involved, the subcontractor will have workers' compensation insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq. of the *Code of Virginia*. The bidder or Offeror further certifies that the Contractor and any subcontractors will maintain these insurance coverages during the entire term of the Contract and that all insurance coverages will be provided by insurance companies authorized to sell insurance in Virginia by the Virginia State Corporation Commission.

### INSURANCE COVERAGES AND LIMITS REQUIRED:

- a. Worker's Compensation - Statutory requirements and benefits.
2. Employers Liability - \$100,000.
3. Commercial General Liability - \$500,000 combined single limit. Commercial General Liability is to include Premises/Operations Liability, Products and Completed Operations Coverage, and Independent Contractor's Liability or Owner's and Contractor's Protective Liability. The Commonwealth of Virginia must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage.

## 19. ANNOUNCEMENT OF AWARD

Upon the award or the announcement of the decision to award a contract over \$30,000, as a result of this solicitation, the purchasing agency will publicly post such notice on the DGS/DPS eVA web site ([www.eva.state.va.us](http://www.eva.state.va.us)) for a minimum of 10 days.

## 20. DRUG-FREE WORKPLACE

During the performance of this Contract, the Contractor agrees to (i) provide a drug-free workplace for the Contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that the Contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific Contract awarded to a Contractor, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the Contract.



## **21. NONDISCRIMINATION OF CONTRACTORS**

A bidder, Offeror, or Contractor shall not be discriminated against in the solicitation or award of this Contract because of race, religion, color, sex, national origin, age, or disability or against faith-based organizations. If the award of this Contract is made to a faith-based organization and an individual, who applies for or receives goods, services, or disbursements provided pursuant to this Contract objects to the religious character of the faith-based organization from which the individual receives or would receive the goods, services, or disbursements, the public body shall offer the individual, within a reasonable period of time after the date of his objection, access to equivalent goods, services, or disbursements from an alternative provider.

## **22. eVA BUSINESS-TO-GOVERNMENT VENDOR REGISTRATION**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution either through the eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service, and complete the Ariba Commerce Services Network registration.

Vendors are strongly encouraged to register prior to submitting a bid or offer. Failure to register will result in the bid being found non-responsive and rejected. All vendors must register in both the eVA and the Ariba Commerce Services Network Vendor Registration Systems.

a. eVA Basic Vendor Registration Service: \$25 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Basic Vendor Registration Service includes electronic order receipt, vendor catalog posting, on-line registration, and electronic bidding, as they become available.

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b. eVA Premium Vendor Registration Service: \$200 Annual Fee plus a Transaction Fee of 1% per order received. The maximum transaction fee is \$500 per order. eVA Premium Vendor Registration Service includes all benefits of the eVA Basic Vendor Registration Service plus automatic email or fax notification of solicitations and amendments, and ability to research historical procurement data, as they become available.

c. Ariba Commerce Services Network Registration. The Ariba Commerce Services Network (ACSN) registration is required and provides the tool used to transmit information electronically between state agencies and vendors. There is no additional fee for this service.

(Include in all STATEWIDE solicitations, contracts, and contract renewals. In addition, this General Term and Condition must be incorporated or incorporated by reference in all purchase orders issued by state agencies and institutions.)

## **23. eVA BUSINESS-TO-GOVERNMENT CONTRACTS**

The eVA Internet electronic procurement solution, web site portal [www.eva.state.va.us](http://www.eva.state.va.us), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies.

Failure to comply with the requirements in a. and b. below will be just cause for the Commonwealth to reject your bid/offer or terminate this contract for default.

Vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution and agree to comply with the following:

- a. Submit a fully executed American Management Systems, Inc., (AMS) Trading Partner Agreement, a copy of which can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us). AMS is the Commonwealth's service provider to implement and host the eVA e-procurement solution.
- b. Provide an electronic catalog (price list) for items awarded under a term contract. The format of this electronic catalog shall conform to the eVA Catalog Interchange Format (CIF) Specification that can be accessed and downloaded from [www.eva.state.va.us](http://www.eva.state.va.us).

## **24. BREACH**

The Contractor shall be deemed in breach of this Agreement if the Contractor (a) fails to make any Product or Service ready for acceptance testing by the specified delivery date; (b) repeatedly fails to respond to requests for maintenance or other required service within the time limits set forth in this Agreement; (c) fails to comply with any other term of this Agreement and fails to cure such noncompliance within ten days (or such greater period as is acceptable to the Commonwealth) following Contractor's receipt of a Show Cause Notice identifying such noncompliance; or (d) fails to provide a written response to the Commonwealth's Show Cause Notice within ten days after receiving same.

The Contractor shall not be in breach of this Agreement if its default was due to causes beyond the reasonable control of, and occurred without any fault or negligence on the part of, both the Contractor and its subcontractors. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Commonwealth in either its sovereign or Contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather.

In the event of breach, in addition to any other remedies provided by law, the Commonwealth may cancel its obligations with respect to any or all unaccepted Products or Services. All costs for deinstallation and return of Products shall be borne by the Contractor. In no event shall any failure by the Commonwealth to exercise any remedy available to it be construed as a waiver of or consent to any breach.

## **25. NON-APPROPRIATION**

All funds for payment of equipment, software or services ordered under this Contract are subject to the availability of legislative appropriation for this purpose. In the event of non-appropriation of funds by the Legislature for the items under this Contract, the Commonwealth will terminate this Contract for those goods or services for which funds have not been appropriated. Written notice will be provided to the Contractor as soon as possible after legislative action is completed.

If any purchases are to be supported by federal funding, and such funding is not made available, the Commonwealth may terminate this Contract for goods or services dependent on such federal funds without further obligation.

## **26. CONTRACTUAL RECORDS**

The Contractor shall make all Contractual books and records and other documents relating to matters under this Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.

Contractual records include, but are not limited to, this Agreement and all executed Orders, Attachments, modifications, invoices, and correspondence between the parties to this Agreement.

## **27. PRIME CONTRACTOR RESPONSIBILITY**

If the Contractor's proposal includes any goods or services to be supplied by another party, the Contractor agrees as follows:

a. The Contractor shall act as prime Contractor for the procurement and maintenance of the entire proposed configuration and shall be the sole point of contact with regard to all obligations under this Agreement.

b. The Contractor hereby represents and warrants that the Contractor has made such other party aware of the proposed use and disposition of the other party's product or services, and that such other party has agreed in writing that it has no objection thereto.

## **28. PATENT/COPYRIGHT PROTECTION**

Contractor, at its own expense, shall defend any suit brought against the Commonwealth for the infringement of patents, copyrights or trade secrets enforceable in the United States if the claim of infringement is alleged to relate to or arise from the Contractor's or Commonwealth's use of any equipment, software, materials or information prepared, developed or delivered in connection with performance of this Agreement. In such suit, Contractor shall indemnify the Commonwealth, its agents, officers and employees for any loss, liability or expense incurred as a result of such suit.

The purchasing agency shall notify the Contractor of such suit within a reasonable time after learning of it and shall give the Contractor the full right and opportunity to conduct the defense of the suit, subject

however to the requirements of Section 2.2-510 and Section 2.2-514 of the Code of Virginia or any successor statute. If principles of governmental or public law are involved, the Commonwealth may, at its option and expense, participate in the defense of the suit.

The Contractor shall not be required to indemnify the Commonwealth for liability arising solely out of the Commonwealth's own specifications or design or solely from the combination of equipment or software furnished hereunder with any equipment or software not supplied by the Contractor.

If, any Product or Service becomes, or in the Contractor's opinion, is likely to become, the subject of a claim of infringement, Contractor may, at its option, provide noninfringing substitutes that are satisfactory to the Commonwealth, or at Contractor's option and expense, may obtain the right for the Commonwealth to continue the use of such Product or Service.

If the use of such equipment or software by the Commonwealth is prevented by permanent injunction or by Contractor's failure to procure the right for the Commonwealth to continue using the software, the Contractor agrees to take back the infringing equipment, software, materials or information and refund the total amount the Commonwealth has paid Contractor under this Agreement, less one half (1/2%) percent of the total paid for each month of use by the Commonwealth.

## **29. CONTRACTUAL DISPUTES**

In accordance with Section 2.2-4363 of the Code of Virginia, Contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after final payment; however, written notice of the Contractor's intention to file such claim must be given to such agency at the time of the occurrence or beginning of the work upon which the claim is based. Pendency of claims shall not delay payment of amounts agreed due in the final payment. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of the Contractor's written claim.

The Contractor may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless the Contractor, within six (6) months of the date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Department of Information Technology, its officers, agents and employees, including, without limitation, the Contracts Manager, are executing this Agreement and any Orders issued hereunder, solely in its or their statutory and regulatory capacities as agent for the Commonwealth agency purchasing and receiving the goods or services identified in Attachment "A" to this Agreement or on the subsequent Order in question and need not be joined as a party to any dispute that may arise thereunder.

In the event of any breach by the Commonwealth, Contractor's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such

claims to be processed pursuant to this Section. In no event shall Contractor's remedies include the right to terminate any license or support services hereunder.

### 30. LIMITATION OF LIABILITY

To the maximum extent permitted by applicable law, the contractor will not be liable under this contract for any indirect, incidental, special or consequential damages, or damages from loss of profits, revenue, data or use of the supplies, equipment and or services delivered under this contract. This limitation of liability will not apply, however, to liability arising from: (a) personal injury or death; (b) defect or deficiency caused by willful misconduct or negligence on the part of the contractor; or (c) circumstances where the contract expressly provides a right to damages, indemnification or reimbursement.

### 31. PERIODIC PROGRESS REPORTS/INVOICES

For Contracts requiring the submission of periodic Contract performance progress reports or program status reports, the Offeror will include a section on involvement of small businesses and businesses owned by women and minorities. This section will specify the actual dollars Contracted to-date with such businesses, actual dollars expended to-date with such businesses and the total dollars planned to be Contracted for with such businesses on this Contract. This information shall be provided separately for small businesses, minority-owned businesses and women-owned businesses.

If the Contract does not require the submission of periodic progress reports, the Offeror will provide the above required information on actual involvement of small businesses and businesses owned by minorities and women as part of their periodic invoices.

### 32. FINAL ACTUAL INVOLVEMENT REPORT

The Contractor will submit, prior to completion or at completion of the Contract and subject to final payment, a report on the actual dollars spent with small businesses and businesses owned by women and minorities during the performance of the Contract. At a minimum, this report shall include for each firm Contracted with and for each such business class (i.e., small, minority-owned, women-owned) the total actual dollars spent on this Contract, the planned involvement of the firm and business class as specified in the proposal, and the actual percent of the total estimated Contract value. A suggested format is as follows:

FIRM NAME ADDRESS AND <u>PHONE NUMBER</u>	TYPE GOODS/ <u>SERVICES</u>	<u>ACTUAL</u> <u>DOLLARS</u>	<u>PLANNED</u> <u>DOLLARS</u>	<u>% OF TOTAL</u> <u>CONTRACT</u>
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
Totals for Business Class		_____	_____	_____

### **33. NONVISUAL ACCESS TO TECHNOLOGY**

All information technology which, pursuant to this Agreement, is purchased or upgraded by or for the use of any State agency or institution or political subdivision of the Commonwealth (the "Technology") shall comply with the following nonvisual access standards from the date of purchase or upgrade until the expiration of this Agreement:

(i) effective, interactive control and use of the Technology shall be readily achievable by nonvisual means;

(ii) the Technology equipped for nonvisual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user of the Technology interacts;

(iii) nonvisual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and

(iv) the technology for nonvisual access shall have the capability of providing equivalent access by nonvisual means to telecommunications or other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing nonvisual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (I) the Technology is not available with nonvisual access because the essential elements of the Technology are visual and (ii) nonvisual equivalence is not available.

Installation of hardware, software, or peripheral devices used for nonvisual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data) used for the manipulation and presentation of information shall permit the installation and effective use of nonvisual access software and peripheral devices.

If requested, the Contractor must provide a detailed explanation of how compliance with the foregoing nonvisual access standards is achieved and a validation of concept demonstration.

The requirements of this Paragraph shall be construed to achieve full compliance with the Information Technology Access Act, 2.2-3500 through 2.2-3504 of the Code of Virginia.

### **34. CONTRACTOR'S REPORT OF SALES**

The Contractor must report the quarterly dollar value, in U.S. dollars and rounded to the nearest whole dollar, of all sales under this Contract by calendar quarter; i.e., January through March, April through June, July through September, and October through December. The dollar value of a sale is the price paid by the user for products and services on a Contract order as recorded by the Contractor. The

reported Contract sales value must include the Industrial Funding Adjustment, as delineated in paragraph entitled "Industrial Funding Adjustment". The Contractor shall provide this report in hard copy to the Controller, DIT, and a copy of the report to the Contracts Manager, DIT, both within 30 days after the end of each quarterly reporting period as defined herein. The report must show each individual item and quantities purchased and the purchaser. The report is required to be hard copy. DIT may at a later time, agree to an electronic version of the report, however, in lieu of any express agreement by both parties as to the electronic format, the Commonwealth will only accept a hardcopy version. The Contractor shall define "sale" prior to the first reporting period and then shall maintain that definition through out the term of this Agreement. Sale may be defined as; 1) when the Commonwealth pays the purchase price, or 2) when the Commonwealth accepts the Products or 3) other as defined by the Contractor.

### **35. INDUSTRIAL FUNDING ADJUSTMENT**

The Contractor must pay DIT, an Industrial Funding Adjustment (IFA). The Contractor must remit the IFA within 30 days after the end of each quarterly reporting period as established in the clause entitled "Contractor's Report of Sales". The IFA equals two percent (2%) of the total quarterly sales reported. Contractor shall remit the IFA together with a copy of the Contractor's Report of Sales as delineated in the paragraph herein entitled "Contractor's Report of Sales". The IFA reimburses the Commonwealth and defrays the costs for IT procurement and the administration of the subsequent awards. The IFA amount due must be paid by check with identification of "Contract number", "report amounts", and "report period", on either the check stub or other remittance material. DIT may at its discretion, agree to an electronic funds transfer, in lieu of a check, however in the absence of an express written agreement from DIT that validates agreement, then the payment shall be made by check as described herein made payable to the Controller, DIT.

If the full amount of the IFA is not paid within thirty (30) calendar days after the end of the applicable reporting period, it shall constitute a Contract debt to the Commonwealth of Virginia, and the State may exercise all rights and remedies available under law. Failure to submit sales reports, falsification of sales reports, and or failure to pay the IFA in a timely manner may result in termination or cancellation of this Contract. Willful failure or refusal to furnish the required reports, falsification of sales reports, or failure to make timely payment of the IFA constitutes sufficient cause for terminating this Contract for default.

It is the intent of the Commonwealth to capture 2% of all sales, including temporary reduced pricing, fire sales, one time sales, trade ins, promotional items that have been marked down and all sales to the Commonwealth under this Agreement.

### **36. TERM**

This Agreement shall take effect on the date of its final execution by both parties, and shall continue for one (1) year. The Commonwealth, at its sole discretion, may extend this Agreement for three (3), additional one (1) year periods. The Commonwealth shall issue a writing, a minimum of 30 days prior to the expiration of any current term, that identifies the new extension.

### **37. CREATION OF INTELLECTUAL PROPERTY**

All copyrightable material created pursuant to this Agreement shall be considered work made for hire and shall belong exclusively to the Commonwealth. If the whole or any part of such copyrightable material cannot be deemed work made for hire, the Contractor agrees to assign, and does hereby irrevocably assign, the copyright thereto to the Commonwealth, and shall execute and deliver such further documents as the Commonwealth may reasonably request for the purposes of acknowledging or implementing such assignment.

The Contractor warrants that no individual, other than regular employees of the Contractor or Commonwealth working within the scope of their employment, shall participate in the creation of any copyrightable material to be delivered under this Agreement, unless such individual and his or her employer, if any, have signed an intellectual property agreement satisfactory to the Commonwealth.

The Commonwealth shall have all rights, title and interest in or to any invention reduced to practice through the performance of this Agreement.

The Contractor hereby agrees that, notwithstanding anything else in this Agreement, in the event of any breach of this Agreement by the Commonwealth, the Contractor's remedy shall not include any right to rescind or otherwise revoke or invalidate the provisions of this Section. Similarly, no termination of the Agreement by the Commonwealth shall have the effect of rescinding the provisions of this Section.



## **Section 9: DESIRABLE CONTRACTUAL TERMS AND CONDITIONS**

The following terms and conditions are desirable. The Contractor may propose alternative language, but the basic form of the Agreement shall be retained. Contractors are requested to limit their proposed changes, if any, to those of a substantive nature.

### **38. SCOPE OF AGREEMENT**

This is a Master Agreement (the "Agreement") between the Commonwealth of Virginia ("Commonwealth") and \_\_\_\_\_ (the "Contractor"), a \_\_\_\_\_ corporation having its principal place of business at \_\_\_\_\_ for the establishment of a website based subscription service or other (Services) (and depending upon the Offeror's response, the Commonwealth may purchase Software which will be identified in negotiations) for "Authorized Users" as identified in section 2.2-9301 of the Virginia Public Procurement Act, to include educational institutions to purchase pursuant to the Commonwealth's Request For Proposal #2003-021, dated \_\_\_\_\_ (the "RFP") and the Contractor's proposal, dated \_\_\_\_\_, 2003 in response thereto.

### **39. INTERPRETATION OF AGREEMENT**

As used in this Agreement, "software" and "software product" shall include all related materials and documentation, whether in machine-readable or printed form.

Headings are for reference purposes only and shall not be considered in construing this Agreement.

The documents comprising this Agreement, and their order of precedence in case of conflict, are: (1) all executed Orders and Attachments referencing this Agreement; (2) this document; (3) the Contractor's proposal if any, if submitted in response to a Request For Proposal ("RFP"); and (4) the Commonwealth's RFP, if any. The foregoing documents represent the complete and final agreement of the parties with respect to the subject matter of this Agreement.

If any term or condition of this Agreement is found to be illegal or unenforceable, it shall be severed, and the validity of the remaining terms and conditions shall not be affected.

Nothing in this Agreement shall be construed as an express or implied waiver of the Commonwealth's sovereign or Eleventh Amendment immunity, or as a pledge of its full faith and credit.

### **40. ORDERS**

Authorized ordering officials representing the "Authorized Users" of this Contract may order Software or Services from this Contract by one of the following Order methods:

- A. eVA: An order placed through the eVA electronic procurement website portal  
<http://www.eva.state.va.us>

B. Purchase Order (PO): An official PO form issued by an Authorized User.

C. Delivery Order (DO): A DO issued by the Acquisition Services Division, DIT.

D. Charge/Credit Card:

- 1) Any order/payment transaction processed through the Commonwealth's Contract with American Express (AMEX). Each Commonwealth Charge Card Order must not exceed \$5,000, or the then current charge card limit. Payment will be made by AMEX to Contractor within three (3) business days.
- 2) Any other order/payment charge or credit card process, e.g. AMEX, MASTERCARD, or VISA, under Contract for use by an Authorized User.

This ordering authority is limited to issuing Orders for Software, and Services that are available under this Agreement. Notwithstanding the section herein, entitled Modifications, no Authorized User shall have the authority to modify this Contract.

Contractor warrants that, except as specifically agreed in writing all Products may be operated at any time for the convenience of the Commonwealth. Without limiting the foregoing, Contractor warrants that there are no restrictions as to consecutive hours or length of personnel shifts. The Commonwealth may make the Products available to any Commonwealth agency or any other Authorized users.

#### **41.a. SERVICES DELIVERY DATE**

The Contractor shall deliver the Service, ready for testing, within 30 days of award of this Contract. The Contractor shall continue to make available the Services for the Term and any extension thereof.

#### **41.b. SOFTWARE DELIVERY DATE**

The Contractor shall deliver the Software within ten (10) days of receiving an Order under this Agreement. If delivery of any Software is not completed within thirty (30) days after the scheduled delivery date, an Authorized User may cancel any individual Order, without further obligation. An Authorized User may postpone any delivery date by notifying the Contractor at least seven (7) days prior to the delivery date. However, the delivery date shall not be postponed more than a total of thirty (30) days.

#### **42.a COMMENCEMENT OF ACCEPTANCE TESTING - SERVICES**

The Services shall be considered ready for testing when the Contractor provides the Commonwealth with the documentation that the Services are available for use by the Commonwealth. The Services shall perform to all Contractor's published specifications, and the requirements of this Agreement. The Commonwealth shall have 30 days to perform any testing. After 30 consecutive days, in the absence of any written documentation from the Commonwealth otherwise, the Services shall be deemed to be accepted.

#### **42.b COMMENCEMENT OF ACCEPTANCE TESTING – SOFTWARE**

For any Software purchased under this Agreement, the Authorized User may test the Software for 15 consecutive days to determine that the Software meets or exceeds the Contractor's published specifications. In the absence of a writing by the Authorized User within that 15 day period that states otherwise, the Software shall be deemed accepted by the Authorized User.

#### **43.a ACCEPTANCE - SERVICES**

Services shall be deemed accepted on the first day after successful completion of the acceptance period. Upon request, the Commonwealth shall provide written confirmation of acceptance. If the standard of performance has not been met after ninety (90) calendar days have elapsed from the start of the acceptance period, the Commonwealth may require a replacement to be provided or may avail itself of the remedies for breach

#### **43.b. ACCEPTANCE – SOFTWARE**

For any instance where an Authorized User has purchased Software under this Agreement and the Software does not meet or exceed Contractor's published specifications, the Authorized User may return the Software at the Contractor's expense, and the Contractor shall provide a full refund within thirty (30) days. Any instance whereby the Contractor does not provide a full refund or exceeds the 30 days identified above, it will be considered a breach of this Agreement.

#### **44. MANUALS**

Contractor shall supply an operations manual for any Software Product purchased under this Agreement, either in electronic form or hardcopy, and in the case of custom-developed deliverables, shall also provide a manual describing the functions, characteristics and operating capabilities that may be expected of such deliverables.

#### **45. LICENSED SOFTWARE**

For any Software purchased under this Agreement, the Contractor represents and warrants that it is the sole owner of the software/firmware product or, if not the owner, has received all proper authorizations from the owner to license the software/firmware product, and has the full right and power to grant the rights contained in this Contract. Contractor further warrants and represents that the software/firmware product is of original development, and that the package and its use will not violate or infringe upon any patent, copyright, trade secret or other property right of any other person.

#### **46. TERM OF LICENSE**

For any Software purchased under this Agreement all licenses granted under this Agreement are purchased on a non-exclusive, irrevocable perpetual license basis and shall commence upon the acceptance of the software Product by the Commonwealth. Notwithstanding the foregoing, the Commonwealth may terminate the license at anytime. All licenses granted to the Commonwealth are for

the use of the software Product at the Commonwealth's computing facilities at the sites identified in any executed Attachment or Order referencing this Agreement. This license is perpetual and in no event shall Contractor's remedies for any breach of this Agreement include the right to terminate any license or support services hereunder.

#### **47. CONFIDENTIALITY**

Commonwealth shall take all reasonable steps necessary or appropriate to insure compliance with this Section by the Commonwealth's employees, agents and representatives, including copying reproducible legends and markings on all physical components of the Software Product.

The Commonwealth's obligation under this Section shall terminate three years after the Commonwealth ceases using the Software Product containing the proprietary information.

#### **48. COMMONWEALTH'S RIGHTS TO COMPUTER SOFTWARE**

Notwithstanding anything to the contrary in this Agreement, the Commonwealth shall have:

- a. Unlimited use of the Software Products on the machines for which it is acquired and on any replacement equipment;
- b. Use of such Software Products with a backup system if the system(s) for which it was acquired is for any reason, inoperative or during an emergency, or the performance of engineering changes in features or model;
- c. The right to use such Software Products at any Commonwealth installation to which the machine(s) may be transferred by the Commonwealth;
- d. The right to copy such software for safekeeping or backup purposes;
- e. The right to modify such Software Product or combine it with other programs or material at the Commonwealth's risk; and
- f. The Commonwealth shall have the right to reproduce any and all physical documentation supplied under the terms of this Agreement, provided, however, that such reproduction shall be for the sole use of the Commonwealth and shall be subject to the same restrictions or use and disclosure as are contained elsewhere in this Agreement.

Nothing contained herein shall be construed to restrict or limit the Commonwealth's rights to use any technical data which the Commonwealth may already possess or acquire under proper authorization from other sources.

#### **49. SOFTWARE WARRANTY**

Contractor warrants the operation of Software Products identified in this Agreement for a minimum of twelve (12) months (or such longer period as may be agreed to) after installation. Software Products that fail to operate in accordance with the Contractor's Proposal or published specifications will be returned, at Contractor's expense, for replacement. Contractor agrees to replace any non-conforming Software Product within five (5) calendar days after receipt of the returned Software Products. Warranty service shall include, but not necessarily be limited to, detection and correction of errors, updating of all Software Products to operate with all updated or revised versions of the operating systems for which the Software Product is licensed, and provision of enhancements to the Software Product as they are generally made available. Warranty charges shall include unlimited telephonic support and all travel, labor, and documentation necessary to maintain the Products in accordance with Contractor's published specifications.

The Contractor shall propose other Software and Services warranties and support that minimally meet the mandatory technical requirements identified in this RFP with different response times, different principal period of maintenance times, and other differences that the Commonwealth may acquire under this Agreement.

#### **50. SERVICES WARRANTY**

Contractor shall deliver and maintain the Services as defined below:

- a. Services shall be warranted to operate free from failure and shall be available for use by the Authorized User twenty-four (24) hours per day, seven (7) days per week, including holidays. The cost of this Warranty is included in the monthly recurring price, for each Service contained herein and continues throughout the life of the Service.
- b. The Contractor shall respond Online or telephonically to reports of interruptions of Services within two (2) hours after receipt of notification from an Authorized User.
- c. Contractor shall furnish this Telephonic and Online Warranty Service twenty-four (24) hours per day, seven (7) days per week for the duration of this Agreement at no cost to the Commonwealth.

**51. SERVICE TROUBLE REPORTING**

Contractor shall provide a single point-of-contact (POC) for the reporting of Service problems encountered by the Commonwealth while using the Services. The POC shall be staffed and available twenty-four (24) hours per day, seven (7) days per week, including weekends and holidays.

**PERSONS SIGNING THIS CONTRACT ARE AUTHORIZED REPRESENTATIVES OF EACH PARTY TO THIS CONTRACT AND ACKNOWLEDGE THAT EACH PARTY AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THE CONTRACT.**

**CONTRACTOR**

**BY:** \_\_\_\_\_

**NAME:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

**COMMONWEALTH OF VIRGINIA**

**BY:** \_\_\_\_\_

**NAME:** Jeff Davis

**TITLE:** Contracts Manager

**DATE:** \_\_\_\_\_

**ATTACHMENT "A"**  
**TO**  
**RFP 2003-021**

Attachment "A" is hereby incorporated into and made an integral part of Agreement Number VA \_\_\_\_\_ – \_\_\_\_\_ between XYZ and the Commonwealth of Virginia.

**NOTE TO CONTRACTORS - DO NOT ADD ANY INFORMATION TO THIS ATTACHMENT "A" AT THIS TIME. THIS ATTACHMENT WILL BE COMPLETED DURING CONTRACT NEGOTIATIONS BETWEEN THE PARTIES TO THIS AGREEMENT.**

LISTING OF ALL PRODUCT PRICES

LISTING OF ALL PRODUCT MAINTENANCE PRICES

SHIP TO BILL TO ADDRESSES

DELIVERY SCHEDULE

AGENCY POINTS OF CONTACT

## APPENDIX A

### **PARTICIPATION IN STATE PROCUREMENT TRANSACTIONS** **BY** **SMALL BUSINESS AND BUSINESSES OWNED BY WOMEN AND MINORITIES**

*Please read the instructions at the beginning of each section carefully.*

The following definitions will be used in completing the information required by one or more of the three categories of businesses contained in this Appendix as applicable to your firm: (1) Participation by Small Businesses; (2) Participation by Businesses Owned by Women; and (3) Participation by Businesses Owned by Minorities.

#### **DEFINITIONS**

**Period** is the specified 12-month period for which the information provided in this list is applicable and valid. The period will be specified as month and year.

**Firm Name, Address and Phone Number** is the name, address and business of minority-owned business with which the Offeror plans to involve in this contract, as applicable.

**Contact Person** is the name of the individual in the specified small business, women-owned business or minority-owned business who would have knowledge of the specified contracting and would be able to validate the information provided in this list.

**Type Goods or Services** is the specific goods or services the Offeror has contracted for from the specified small, women-owned or minority-owned business over the specified period of time or plans to use in the performance of this contractor, as applicable. The Offeror will asterisk (\*) those goods and services that are in the Offeror's primary business or industry.

**Dollar Amount** is the total dollar amount (in thousands of dollars) the Offeror has contracted for or has done business with the listed firm during the specified period or plans to use on this contract, as applicable.

**% Total Company Expenditures for Goods and Services** is calculated by dividing the dollar amount of business conducted or contracted for with the indicated firm over the specified period by the total expenditure of the Offeror over the specified period for goods and services.

**% of Total Contract** is calculated by dividing the estimated dollars planned for the indicated firm on this contract by the total Offeror estimated price of this contract.



### **PARTICIPATION BY SMALL BUSINESS**

- A. Offeror certifies that it ( ) is, ( ) is not, a small business concern. For the purpose of this procurement, a small business is a concern, including its affiliates, which is independently owned and operated, but is not dominant in the field of operation in which it is contracting and can further qualify under the criteria concerning number of employees, average annual receipts, or other criteria, as prescribed by the United States Small Business Administration.
- B. List Small businesses with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12 -month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

**PERIOD:** From: \_\_\_\_\_ To: \_\_\_\_\_

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Co. Expenditures for Goods & Services

**PARTICIPATION BY SMALL BUSINESS**

(Continued)

- C. Describe Offeror's plans to involve small businesses in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract

**PARTICIPATION BY BUSINESSES OWNED BY WOMEN**

- A. Offeror certifies that is ( ) is, ( ) is not, a women's business enterprise or women-owned business. For the purpose of this procurement, a women-owned business is a concern that is at least 51 percent owned by a woman or women who also control and operate it. In this context, "control" means exercising the power to make policy decisions, and "operate" means being actively involved in the day-to-day management.
- B. List businesses owned by women with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

**PERIOD:**      From: \_\_\_\_\_      To: \_\_\_\_\_

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Co. Expenditures for Goods & Services

**PARTICIPATION BY BUSINESSES OWNED BY WOMEN**

(Continued)

- C. Describe Offeror's plans to involve businesses owned by women in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract

**PARTICIPATION BY BUSINESSES OWNED BY MINORITIES**

- A. Offeror certifies that is ( ) is, ( ) is not, a minority business enterprise or minority-owned business. For the purpose of this procurement, a minority-owned business is a concern that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged persons. Such disadvantage may arise from cultural, racial, chronic economic circumstances or background, or other similar cases. Such persons include, but are not limited to, Blacks, Hispanic Americans, Asian Americans, American Indians, Eskimos and Aleuts.
- B. List businesses owned by minorities with which the Offeror has contracted or done business and dollar amounts spent with each of these businesses in the most recent 12-month period for which data are available. Offerors are encouraged to provide additional information and expand upon the following format:

**PERIOD:**      From: \_\_\_\_\_      To: \_\_\_\_\_

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Co. Expenditures for Goods & Services

**PARTICIPATION BY BUSINESSES OWNED BY MINORITIES**

(Continued)

- C. Describe Offeror's plans to involve businesses owned by minorities in the performance of this contract either as part of a joint venture, as a partnership, as subcontractors or as suppliers. Offerors are encouraged to provide additional information and expand upon the following format:

Firm Name, Address & Phone No.	Contact Person	Type Goods/ Services	Dollar Amounts	% Total Contract

**APPENDIX B      VENDOR REFERENCE FORM**

**REQUEST FOR PROPOSAL 2003-21**

**COMMONWEALTH OF VIRGINIA  
DEPARTMENT OF INFORMATION TECHNOLOGY**

**VENDOR CLIENT REFERENCE FORM**

**Vendor Name:** \_\_\_\_\_

**CLIENT**

**Name of Firm:** \_\_\_\_\_

**Address:** \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**Telephone Number of Contact:** \_\_\_\_\_

## **APPENDIX C      PROPRIETARY INFORMATION**

List all pages of this proposal that contain proprietary information. Only pages so listed will be treated as proprietary. Please refer to section 1.15 of this document.